

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NICHOLAS BARNARD,

Plaintiff,

v.

PACIFIC LONGLINE CO., LLC, et al.,

Defendants.

CASE NO. C05-1443C

ORDER

This matter comes before the Court on Defendants' motion for costs incurred in defending a previously dismissed action (Dkt. No. 9). Having considered the papers filed by the parties and finding oral argument unnecessary, the Court DENIES Defendants' motion for the following reasons.

Under Rule 41(d), the Court may order the plaintiff to pay costs incurred by the defendant in defending a previous suit "based upon or including the same claim against the same defendant." FED. R. CIV. P. 41(d). This rule confers broad discretion on the district courts to "prevent vexatious suits and secure the payment of costs, but a court will be reluctant to stay an action brought in good faith, especially when a plaintiff financially is unable to pay the former costs." *Phoenix Canada Oil Co. v. Texaco, Inc.*, 78 F.R.D. 445, 448 (D. Del. 1978).

As an initial matter, the Court finds that Plaintiff's current suit is based on the same claims against the same defendants as his previously suit (*compare* C05-01442C, Dkt. No. 1, *with* C03-2614Z, Dkt. No.

1 1), and that Plaintiff voluntarily dismissed the previous action (*see* C03-2614Z, Dkt. No. 12). The Court  
2 nonetheless declines to order Plaintiff to pay Defendant's costs, or to stay the action.

3 Whatever the reasons for Plaintiff's voluntary dismissal of the earlier action, he has made a  
4 sufficient showing that he is financially unable to pay Defendants' costs (*see* Dkt. No. 12), and that to so  
5 order would effectively bar Plaintiff from federal court. *Cf. Gregory v. Dimock*, 285 F.2d 717, 718 (2nd  
6 Cir. 1961) (setting aside stay order that "effectively prevents an indigent seaman from obtaining access to  
7 the federal court to have the merits of his claims adjudicated . . . despite the federal policy of permitting  
8 seamen with personal injury claims to sue without prepayment of fees or the furnishing of security for  
9 costs [under] 28 U.S.C. § 1916").

10 Accordingly, the Court DENIES Defendants' motion.

11 SO ORDERED this 28th day of October, 2005.

12  
13 A handwritten signature in black ink, appearing to read "J. C. Caplan", written over a horizontal line.

14 UNITED STATES DISTRICT JUDGE  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25